IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Ins.APP.No. 4 of 2003(A)

EIC.15/2001 of E.I.COURT, KOZHIKODE
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: APPELLANT/APPLICANT
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1. M.A.UNNEERIKUTTY, S/O. RARICHAN,(DIED)
MANAGING PARTNER, M/S.KALPAKA TOURIST HOME,
TOWN HALL ROAD, KOZHIKODE -673 001.

*2. M.A. PANCHALI, W/O LATE M.A.UNNEERIKUTTY AGED 66 YEARS
RESIDING AT PANJAJANYAM, IMA HALL ROAD, CALICUT

*3. M.A.JALAJA PRAKASH, D/O LATE M.A.UNNEERIKUTTY, AGED 51 YEARS
PANJAJANYAM, IMA HALL ROAD, CALICUT

*4. M.A.SISHAN, S/O LATE M.A.UNNEERIKUTTY, AGED 49 YEARS
RESIDING AT PANJAJANYAM, IMA HALL ROAD , CALICUT

*5. M.A.SHEELA JEHANGIR, D/O LATE M.A.UNNEERIKUTTY, RESIDING
AT PANJAJANYAM , IMA HALL ROAD, CALICUT .

*6. M.A.SAJEEV, S/O LATE M.A UNNERIKUTTY, AGED 45 YEARS
PANJAJANYAM, IMA HALL ROAD, CALICUT

(THE LEGAL REPRESENTATIVES OF THE DECEASED SOLE APPELLANT ARE IMPLEADED AS SUPPLEMENTARY APPELLANTS 2 TO 6 VIDE ORDER DATED 20.6.2007 IN I.A. 1101/2007)

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: RESPONDENT

THE REGIONAL DIRECTOR, ESI CORPORATION,
THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR, SC, ESI CORPN

THIS INSURANCE APPEALS HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

Insurance Appeal No. 4 of 2003

Dated this the 7th day of August 2007

JUDGMENT

The applicant in E.I.C. No. 15/2001 on the file of the Employees' Insurance Court, Kozhikode is the appellant. The appeal is filed against an order passed by the Insurance Court dismissing an application filed by the applicant / appellant challenging an order passed by respondent by which it was held that the appellant was liable to pay an amount of Rs. 37,508/- with interest at the prescribed rate from.

2. An inspection was conducted by the Insurance Inspector in the premises of the appellant on 3-11-1999 and 27-12-1999 and submitted a report setting out that the appellant had omitted to pay contribution in respect of various amounts such as repair and maintenance, incentive, cleaning charges, stipend, Extra duty allowance Repair & maintenance (Carpentry), Service charges, Contract charges etc. . He had noted that an amount of Rs. 38,938/- was due from the appellant to the Corporation. Accordingly, Ext.D4 order was passed. Challenging that order the appellant filed EIC 15/ 2001 before the Insurance Court. It was contended that these amounts will not form part of wages and as such the appellant was not liable to pay the contribution in respect of those amounts .Altogther an amount of Rs. 5,77,040-10 had been booked by the respondent during the period from 10/97 to 3/99 under various heads as dealt with above. The

appellant omitted to include Rs. 25,037-75 during 10/97 to 3/98 and Rs. 60,954-90 during 4/98 to 3/99 paid as incentive. In **Harihar Poly fibres Vs. Regional Director, ESIC (1984 (2) LLJ 475**) the Supreme Court has held that the incentive allowances will form part of wages. So the finding of the Insurance Court that amount paid as incentive is liable to be included as wages is correct. The next item is cleaning charges. The appellant omitted to include an amount of Rs. 1,375/- during 10/97 to 3/98 and Rs. 9,645/- during 4/98 to 3/99 towards cleaning charges. The cleaning charges also will form part of the wages. The appellant also omitted to include an amount of Rs.1,500/- on the ground that it was the wages paid to the casual labourers. The appellant omitted to include an amount of Rs.81,091-60 during 10/97 to 3/98 and Rs. 1,50,092-60 during 4/98 to 3/99 on the ground that those amounts were paid as stipend. The Insurance inspector observed that these payments were made as wages to temporary and casual employees and not as stipend to trainees and hence those amounts are also to be included as wages. In **Regional Director E.S.I Corporation Madras Vs. S.I.Flour Mills (P) Ltd (AIR 1986 SC 1686)** the Supreme Court has held that casual employees also come within the purview of the Employees Insurance Act and the wages paid to them is also coverable. Overtime charges paid will also form part of the wages. Another major item is the amount spent for maintenance and

repairs. In **Regional Director . ESI Corporation Vs. Standard Pottery works and others (2002 (94) FLR 265)** a Division Bench of this Court has held that wages paid to labourers employed for repairs and maintenance will come within the purview of the Act and hence that amount is also coverable. So the finding of the insurance court that the amount paid towards contract charges as well as service charges are also coverable is perfectly correct and does not call for any interference. There is no merit in the appeal and the same is only to be dismissed.

In the result the appeal is dismissed

K.PADMANABHAN NAIR,JUDGE

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